the amount of the taxed costs against the personal assets of the liquidator until 2nd January, 1971. The applicant himself admits that he has not been able to collect any money from the debtors of the company.

From his own affidavits, the applicant cannot be said to have been acting in good faith and with a sense of responsibility to his duties, particularly when he requested the bailiff to deliver to him the goods that had been seized. His action caused the respondent to apply to the court for his rights to be set aside. When the court made the order, he was the one who was ordered to pay the costs. He is therefore personally responsible.

The application is dismissed with costs against the liquidator personally.

Application dismissed.

Solicitors: *Jackson & Masacorale; L. M. Ong & Co.*

MARY NG & ANOR. v. OOI GIM TEONG

[O.C.J. (Mohamed Azmi J.) April 6, 1972]

[Kuala Lumpur — Originating Summons No. 53 of 1971]

Family Law — Maintenance — Marriage according to Chinese Law and Custom — Divorce by Chinese customary law — Entitlement of female spouce to maintenance — Obligation to provide for child.

Chinese Law and Custom — Divorce — Formalities — Validity of.

This was a claim for maintenance under section 3 of the Married Women and Children (Maintenance) Ordinance, 1950.

The first applicant, who alleged to be the lawful wife of the respondent, claimed maintenance at the rate of $150 per month for herself, and a further sum of $100 per month for her infant child, the second applicant.

It was not in dispute that on December 10, 1967, the first applicant and the respondent were lawfully married in Penang according to Chinese rites and customs. Moreover, the respondent did not dispute his liability to pay maintenance for his son the second applicant. However, he claimed he was not liable to maintain the first applicant on the ground that he had already divorced her according to Chinese customary law on May 24, 1970, and that their marriage was accordingly dissolved.

Thus, the main issue was whether the respondent did in fact divorce the first applicant on May 24, 1970. The court had to consider three factors: (a) whether according to Chinese custom, as applied in the States of Malaya, divorce is possible; (b) what form does such a divorce take; and (c) did in point of fact a divorce take place according to such form.

Expert evidence was given on Chinese customary marriage and divorce.

Held: (1) under Chinese customary law a husband can divorce his principal wife unilaterally for cause even if she has borne him a son;

(2) the divorce must be made publicly known. The cardinal rule is that it should not be made secret. In the instant case, the respondent's intention was made known even before the divorce. The fact that the respondent did not take his wife to her mother's house for the purpose of announcing the divorce was not fatal, having regard to the real intention behind the practice in ancient times. This requirement had been complied with;

(3) therefore, under the circumstances, the respondent had lawfully divorced the first applicant according to Chinese custom with effect from May 24, 1970, and, as such she was not entitled to maintenance. However, the respondent should pay $100 to the first applicant for the maintenance of the second applicant, the child of the marriage until such time as the child is able to maintain himself.

Per Mohamed Azmi J.: "... In dismissing this application, I have not overlooked the possible effect of my decision on the position and status of Chinese women in this country who have gone through marriage according to their personal law. As learned counsel for the applicants has forcefully put it, allowing a Chinese man in this modern age to divorce his wife for either talkativeness or disobedience would amount to giving thousands of Chinese husbands a gun in their hands. This may be so; and if the Chinese customary law on marriage and divorce is no longer popular and considered obsolete, it is for the legislature to make inroads into them, as has already been done in China".

Cases referred to:-

(1) *Woon Ngee Yew & Ors.* v. *Ng Yoon Thai & Ors.* [1941] M.L.J. 37.

(2) *Choo Ang Chee* v. *Neo Chan Neo & Ors.* (1908) 12 S.S.L.R. 120.

(3) *Dorothy Yee Yeng Nam* v. *Lee Fah Kooi* [1956] M.L.J. 257.

[Editorial Note: See article on "Chinese Customary Marriage and Divorce" by Lee Siow Mong at p. iii *supra.*]

SUMMONS.

E. J. Lawrence for the applicants.

V. C. George (*K. S. Narayanan* with him) for the respondent.

The facts so far as they are material to this report, appear sufficiently from the judgment below.

Cur. Adv. Vult.

Mohamed Azmi J.: This is a claim for maintenance under section 3 of the Married Women and Children (Maintenance) Ordinance No. 36 of 1950. The first applicant, who alleged to be the lawful wife of the respondent, claims maintenance at the rate of $150 per month for herself and a further sum of $100 per month for the maintenance of her infant child, the second applicant. It is not in dispute that on December 10, 1967 the first applicant and the respondent were lawfully married in Penang according to Chinese rites and customs, and that out of this marriage, the first applicant gave birth to a boy (second applicant) on October 20, 1968. Subject to quantum, the respondent does not dispute his liability to pay maintenance for his son, who is admittedly in the custody of the first applicant. But the respondent claims that he is not liable to maintain the first applicant on the ground that he had already divorced her according to Chinese customary law on May 24, 1970 and that their marriage was accordingly dissolved.

The main issue in this case is, therefore, whether the respondent did in fact divorce Mary Ng (the first applicant) on May 24, 1970. For the determination of this issue, I agree with the submission of learned counsel for the respondent that on the authority of

Woon Ngee Yew & Ors. v. *Ng Yoon Thai & Ors.*,[1] the following three factors have to be considered: —

(a) whether according to Chinese custom as applied in the States of Malaya divorce is possible;

(b) what form does such a divorce take; and

(c) did in point of fact a divorce take place according to such form.

Both Mary Ng and the respondent are Chinese by race. Since it is admitted that they were lawfully married in this country according to Chinese rites and customs and therefore had opted to contract a polygamous marriage in accordance with their personal law, as the law now stands, if any divorce had taken place, it could only receive judicial recognition if Chinese custom permitted such a divorce. In *Woon Ngee Yew's* case, the principle enunciated in the famous "The Six Widows Case" (*Choo Ang Chee* v. *Neo Chan Neo & Ors.*[2]) that the personal law of all Chinese in the Straits Settlements was based on race, irrespective of domicile or religion, has been extended to all Chinese throughout Malaya. Thus in *Dorothy Yee Yeng Nam* v. *Lee Fah Kooi*[3] at page 263, Thomson J. (as he then was) said:

"The courts in effect have given judicial recognition to certain customs prevalent or thought to be prevalent among persons of Chinese race irrespective of their domicile or religion. They have thus set up what might be called a sort of common law as affecting persons of Chinese race and it would seem that the case is the same in those portions of the present Federation which were not formerly part of the Straits Settlements or, perhaps more accurately, which were part of the former Federated Malay States."

Such divorce according to the personal law of the Chinese has over the years been recognized by our courts on proof of the Chinese custom under which the divorce was effected. The custom must be proved as a question of fact based on the evidence of expert witness and recognized books. As stated by Murray-Aynsley J. (as he then was) in *Woon Ngee Yew's* case at page 33:

"In order to ascertain Chinese custom, there are a few decisions in cases in the Federated Malay States and in the Colony. Apart from this it is a question of fact to be proved by the evidence of witnesses. There are also certain books which have been cited in this and other cases and which have acquired a certain degree of recognition."

In the present case, the issue involves a Chinese husband unilaterally divorcing his principal wife (*T'sai*) according to Chinese customs which, as far as I am aware, has not been a subject of any decided cases either in Malaysia or Singapore. On behalf of the respondent, Mr. Lee Siow Mong was called to give evidence as an expert. He was born in Singapore and had his early Chinese classical education in Swatow Village, Kwantung Province, China. On his return to Singapore in 1926, he continued with his Chinese classical education with a private tutor whilst attending English school until he sat for his Senior Cambridge Examination in 1933. Since then, he continued to keep his interest in the studies of Chinese classics and generally in Chinese arts and culture. Since 1952, he has been the president of the China Society in Singapore, a society involved in the study of Chinese arts and culture. Although he is now employed as the manager of the Employees Provident Fund, Malaysia, he is still the current president of the China Society. Before coming to Malaysia, he was a civil servant in Singapore holding various important posts, such as Permanent Secretary to the Ministry of Education, Permanent Secretary to the Ministry of Culture and Permanent Secretary to the Prime Minister. He is familiar with the Chinese written law known as the *Ta Tsing Leu Lee*. He has also given expert evidence on Chinese marriage and customs both in the magistrate's courts and High Courts in Singapore, and his opinion has been accepted. He testified that, according to Chinese customs, a husband can unilaterally divorce his principal wife (*T'sai*) for cause on any of the following seven grounds: —

(1) unfilial or disrespect to husband's parents;
(2) barrenness;
(3) adultery;
(4) suffering from serious disease such as leprosy;
(5) jealousy;
(6) talkativeness;
(7) committing theft.

The above seven grounds for divorce can be found not only in *Staunton's* translation of the *Ta Tsing Leu Lee* and at page 109 of "Colonial Law and the Chinese Society" by Mr. Morris Freedman, a Professor of Anthropology in the University of London, but also at page 61 of "Marriage Laws and Customs of China" by Dr. Vermier Y. Chiu. Although Dr. Chiu is critical of the seven grounds and regarded them — from the modern view of life — as nothing but humbug designed to give the husband a pretext for making a riddance of his wife when he is tired of her, there is no denying that these grounds for unilateral divorce do exist under Chinese customary law. This is made even clearer at page 72 of his book where he said:

"The author has, in the course of his practice as a barrister in Hong Kong, personally come across an instance where a certain medical practitioner in divorcing his wife on the ground of loquacity, which is one of the seven grounds for divorce under the *Ch'ing* Law but which is not a legitimate cause for divorce under either the English Law or the Nationalist Law, by serving a *'hsiu shu'* on the wife. The point in question has never been contested in the law courts of Hong Kong, but when it is brought before the Hong Kong courts for adjudication, it will be extremely difficult for the judge to decide against the party who maintains that since the *Ch'ing* Law as regards domestic relations is still applicable to the Chinese domiciled in Hong Kong, the *'hsiu shu'* is an admissible evidence of divorce unless, of course, the original marriage took place in the marriage registry of Hong Kong in which case the English law of divorce and not the *Ch'ing* Law applies."

Having regard to the experience and qualifications of Mr. Lee Siow Mong, I accept him as an expert witness and I accept his evidence that under Chinese customary law a husband can divorce his principal wife unilaterally for cause even if she has borne him a son. Although, according to Mr. Lee, there are three exceptions to the rule, these exceptions need not be considered as they are irrelevant to the present case.

The next question to be considered is: What form does such a divorce take? From the expert evidence of Mr. Lee, assuming there are grounds for divorce, the husband must make the divorce known to friends and relatives. There is nothing specific laid down, but practice has it that the husband with his relatives

and friends should take his wife physically to the home of her parents and there in the presence of her parents announce her faults and pronounce the fact that he is divorcing her. The real essence of this practice is that the divorce must be made publicly known. Mr. Lee is of the opinion that, since there are no fixed rules laid down, so long as the divorce and the ground for it are made publicly known it is sufficient. The cardinal rule is that it should not be made secret. In the instant case, as the facts sworn in the respondent's affidavit particularly paragraph 8(b) have been admitted, I find that the respondent not only has a valid cause under Chinese customary law to divorce Mary Ng but also from his evidence in court — which has not been seriously challenged — a divorce has in fact taken place in accordance with Chinese custom. In my view, the particulars given in the respondent's affidavit regarding the disrespectful and disobedient behaviour of his wife towards him and his mother come within one of the seven grounds for divorce under Chinese customary law. According to the evidence of the respondent, on May 23, 1970 he went to his mother's house at Ipoh where he told his mother that he wanted to divorce his wife according to Chinese customary law and a family gathering was accordingly arranged. The following day in the presence of his mother, grandmother, two uncles, an old family friend and his wife's godfather (Mr. Eu Theam Phee), he announced the various misconducts of his wife and told the gathering that he was divorcing her as from that day, *i.e.* May 24, 1970. He also told those present that he would be announcing the divorce in the newspapers in due course. Although the respondent had not taken his wife to her parents' house for the purpose of divorce, to my mind, what he did is more than sufficient to publicise the divorce. Apart from the public pronouncement which he made personally at the family gathering at Ipoh, Mary Ng was notified by registered letter dated May 7, 1970 of the respondent's intention to seek a divorce. The fact that the divorce was intended to be a unilateral one according to Chinese customary law was also made clear to Mary Ng's solicitors dated June 10, 1970. The fact of the divorce was also made public in *Nanyang Siang Pau* — a local Chinese newspaper — on June 19, 1970. What is important is that publicity as to the intention and fact of divorce must be given and must not be kept secret. In *Woon Ngee Yew's* case, publicity given to friends of the husband was held to be sufficient notoriety. In the instant case, the respondent's intention was made known even before the divorce; and not only was the divorce pronounced at the gathering at Ipoh where Mary Ng's godfather was present but also the fact of divorce was made known to Mary Ng's solicitors in writing and this was followed by publication in the Chinese press. The fact that the respondent did not take his wife to her mother's house for the purpose of announcing the divorce is not fatal having regard to the real intention behind the practice in ancient times. This requirement has, in my view, been complied with. As stated by the expert witness, where the wife had already left the husband's household there was no need to comply with the practice so long as sufficient publicity of the fact of the divorce had been made.

Under the circumstances, I find the respondent had lawfully divorced the first applicant according to Chinese customs with effect from May 24, 1970 and, as such, she is not entitled to maintenance under the Married Women and Children (Maintenance) Ordinance, 1950. In this case, it should also be noted that since January 6, 1970 Mary Ng had left the matrimonial home, and from the evidence before me, there can be no doubt that the marriage had broken down. I would therefore dismiss her application. In dismissing this application, I have not overlooked the possible effect of my decision on the position and status of Chinese women in this country who have gone through marriage according to their personal law. As learned counsel for the applicants has forcefully put it, allowing a Chinese man in this modern age to divorce his wife for either talkativeness or disobedience would amount to giving thousands of Chinese husbands a gun in their hands. This may be so; and if the Chinese customary law on marriage and divorce is no longer popular and considered obsolete, it is for the legislature to make inroads into them, as has already been done in China.

As regards the maintenance for the respondent's son, consideration should be given to the financial position of the respondent. He is a technical assistant attached to the Telecommunications Department, Kuala Lumpur, and is in receipt of a salary of $880 per month. According to his evidence, his main expenditures per month are approximately as follows: —

(1)	accommodation plus water and electricity	$ 88.00
(2)	meals	250.00
(3)	motorcar instalment (two more years to complete)	176.00
(4)	car maintenance	70.00
(5)	laundry	20.00
(6)	assistance to his mother	100.00
	Total:	$704.00

Having regard to the above expenditures, a sum of $100 applied for the maintenance of the second applicant is well within the means of the respondent. I therefore make an order that the respondent should pay $100 per month to the first applicant for the maintenance of Ooi Hock Lye (second applicant) with effect from June 1, 1970 and thereafter on the first of each subsequent month until such time as the child is able to maintain himself. As regards costs, I agree with the application of both counsel that the matter be adjourned for argument to another date to be fixed by the senior assistant registrar.

Order accordingly.

Solicitors: *Lawrence & Joseph; Ng Ek Teong & Partners.*